



both dated March 11, 2010, and the records or testimony sought by the summons as they relate to that person or entity are as follows:

- a. United Central Bank, Attention: Legal Department, 4555 West Walnut Street, Garland, Texas 75042, with respect to the following records:
  - (1) Copies of all signature cards relative to the accounts, open and closed, of PENA'S CONCRETE & DEMOLITION, INC., for the period APRIL 1, 2007 TO THE PRESENT;
  - (2) Copies of all corporate resolutions relative to the accounts, open or closed, of PENA'S CONCRETE & DEMOLITION, INC., for the period APRIL 1, 2007 TO THE PRESENT;
  - (3) Copies of all financial statements relative to the accounts, open or closed, of PENA'S CONCRETE & DEMOLITION, INC., for the period APRIL 1, 2007 TO THE PRESENT;
  - (4) Copies of all loan agreements relative to the accounts, open or closed, of PENA'S CONCRETE & DEMOLITION, INC., for the period APRIL 1, 2007 TO THE PRESENT;
  - (5) Copies of 1 checks issued by the taxpayer for each month for the period APRIL 1, 2007 TO THE PRESENT. Please provide 1 check for each signer on account along with associated statements.
- b. Compass Bank, Attention: Research Department, 701 South 20<sup>th</sup> Street, Suite 1802, Birmingham, Alabama 35233, with respect to the following records:
  - (1) Copies of all signature cards relative to the accounts, open and closed, of PENA'S CONCRETE & DEMOLITION, INC., for the period APRIL 1, 2007 TO THE PRESENT;
  - (2) Copies of all corporate resolutions relative to the accounts, open or closed, of PENA'S CONCRETE & DEMOLITION, INC., for the period APRIL 1, 2007 TO THE PRESENT;
  - (3) Copies of all financial statements relative to the accounts, open or closed, of PENA'S CONCRETE & DEMOLITION, INC., for the period APRIL 1, 2007 TO THE PRESENT;
  - (4) Copies of all loan agreements relative to the accounts, open or closed, of PENA'S CONCRETE & DEMOLITION, INC., for the period APRIL 1, 2007 TO THE PRESENT;

- (5) Copies of 1 checks issued by the taxpayer for each month for the period APRIL 1, 2007 TO THE PRESENT. Please provide 1 check for each signer on account along with associated statements.

5. Attached hereto is a copy of the Summons issued to those two entities upon which the Internal Revenue Service is seeking records.

6. The records sought are too broad and overreaching, as they encompass the period from April 1, 2007 to the present. The Internal Revenue Service has questioned nonpayment of 940 and 941 taxes for the periods consisting only of the last three quarters of 2007 and first two quarters of 2008 only. Contact has been made with the officer of the Internal Revenue Service issuing the Summons by Pena's Concrete & Demolition, Inc.'s representatives offering to voluntarily procure the records for the applicable periods of time from both banking institutions to which the Summons have been issued. Such offer has not been responded to. The voluminous nature of the Summons request and overbreadth would create a substantial time delay, potential negative effect on the listed banking institutions' relationship with Pena's Concrete & Demolition, Inc., and unwarranted bank research fees and expenses. The Summons also requests all "financial statements", "loan agreements", and "corporate resolutions" relative to accounts of the Petitioner at such financial institutions which do not relate in any way to the payment of wages or 940 and 941 taxes for the period the last three quarters of 2007 and the first two quarters of 2008, but may relate to proprietary information requested by those banking institutions. Pena's Concrete & Demolition, Inc. does not owe 940 and 941 taxes as alleged by the Internal Revenue Service for the last three quarters of 2007 and the first two quarters in 2008, and has requested that a full review and reconciliation be made with the Internal Revenue Service with respect to claimed amounts due and owing for those two quarters in 2008, as well as the last three quarters in 2007.

7. A copy of this Petition is being transmitted by certified mail, return receipt

requested, to the following listed persons or entities as required under Internal Revenue Code, Section 6709(b)(2)(b):

Internal Revenue Service, 8701 South Gessner, Stop 5432 HAL, Houston, Texas 77074-2926; R. Dovalina, Revenue Officer;

United Central Bank, Attention: Legal Department, 4555 West Walnut Street, Garland, Texas 75042

Compass Bank, Attention: Research Department, 701 South 20<sup>th</sup> Street, Suite 1802, Birmingham, Alabama 35233

WHEREFORE, PREMISES CONSIDERED, Petitioner prays that the Summons described and attached hereto as to Compass Bank and United Central Bank be in all things quashed.

Respectfully submitted,

Ewing & Jones, P.L.L.C.

By 

G. Riley Hetherington  
Texas Bar No. 09554500  
Federal No. 6041  
6363 Woodway, Suite 1000  
Houston, Texas 77057  
Telephone: (713) 590-9600  
Facsimile: (713) 590-9602

Attorney for Petitioner

CERTIFICATE OF SERVICE

I certify that a copy of Petition to Quash Summons was served on March 31, 2010, by certified U.S. mail, return receipt requested, on the following:

U.S. Attorney's Office for the  
Southern District of Texas  
P.O. Box 61129  
Houston, Texas 77208  
Attn: Civil Process Clerk

U.S. Attorney General  
Department of Justice  
950 Pennsylvania Ave. NW  
Washington, D.C. 20530

Internal Revenue Service  
8702 South Gessner, Stop 5432 HAL  
Houston, Texas 77074-2926  
R. Dovalina, Revenue Officer

United Central Bank  
Attention: Legal Department  
4555 West Walnut Street  
Garland, Texas 75042

Compass Bank  
Attention: Research Department  
701 South 20th Street, Suite 1802  
Birmingham, Alabama 35233



G. Riley Hetherington



# Summons

In the matter of JOHN WATSON, JR AS PRESIDENT OF PENA'S CONCRETE & DEMOLITION, INC

Internal Revenue Service (Division): Small Business / Self Employed

Industry/Area (name or number): Small Business / Self Employed - Area 25

Periods: 06-30-2007, 09-30-2007, 12-31-2007, 03-31-2008, 06-30-2008

## The Commissioner of Internal Revenue

To: UNITED CENTRAL BANK

At: ATTN: LEGAL DEPT 4555 W WALNUT ST, GARLAND, TX 75042

You are hereby summoned and required to appear before R DOVALINA, an officer of the Internal Revenue Service, to give testimony and to bring with you and to produce for examination the following books, records, papers, and other data relating to the tax liability or the collection of the tax liability or for the purpose of inquiring into any offense connected with the administration or enforcement of the internal revenue laws concerning the person identified above for the periods shown.

- (1) Copies of all signature cards relative to the accounts, open and closed, of PENA'S CONCRETE & DEMOLITION, INC #71-0948803, for the period APRIL 1, 2007 TO THE PRESENT;
- (2) Copies of all corporate resolutions relative to the accounts, open or closed, of PENA'S CONCRETE & DEMOLITION, INC #71-0948803, for the period APRIL 1, 2007 TO THE PRESENT;
- (3) Copies of all financial statements relative to the accounts, open or closed, of PENA'S CONCRETE & DEMOLITION, INC #71-0948803, for the period APRIL 1, 2007 TO THE PRESENT;
- (4) Copies of all loan agreements relative to the accounts, open or closed, of PENA'S CONCRETE & DEMOLITION, INC #71-0948803, for the period APRIL 1, 2007 TO THE PRESENT;
- (5) Copies of 1 checks issued by the taxpayer for each month for the period APRIL 1, 2007 TO THE PRESENT. Please provide 1 check for each signer on account along with associated statements.

**Do not write in this space**

**Business address and telephone number of IRS officer before whom you are to appear:**

8701 S GESSNER, STOP 5432HAL, HOUSTON, TX 77074-2926 - (281)721-7142

**Place and time for appearance at:** 8701 S GESSNER, STOP 5432HAL, HOUSTON, TX 77074-2926



on the 13th day of April, 2010 at 09:30 o'clock A m.

Issued under authority of the Internal Revenue Code this 11th day of March, 2010

Department of the Treasury  
Internal Revenue Service

[www.irs.gov](http://www.irs.gov)

Form 2039 (Rev. 12-2008)  
Catalog Number 21405J

R DOVALINA

Signature of Issuing Officer

REVENUE OFFICER

Title

ACTING MANAGER

Title

Signature of Approving Officer (if applicable)

**Part C -- to be given to noticee**



# Summons

In the matter of JOHN WATSON, JR AS PRESIDENT OF PENA'S CONCRETE & DEMOLITION INC

Internal Revenue Service (Division): Small Business / Self Employed

Industry/Area (name or number): Small Business / Self Employed - Area 25

Periods: 06-30-2007, 09-30-2007, 12-31-2007, 03-31-2008, 06-30-2008

## The Commissioner of Internal Revenue

To: COMPASS BANK

At: ATTN: RESEARCH DEPT, 701 S. 20TH ST, STE 1802, BIRMINGHAM, AL 35233

You are hereby summoned and required to appear before R DOVALINA, an officer of the Internal Revenue Service, to give testimony and to bring with you and to produce for examination the following books, records, papers, and other data relating to the tax liability or the collection of the tax liability or for the purpose of inquiring into any offense connected with the administration or enforcement of the internal revenue laws concerning the person identified above for the periods shown.

- (1) Copies of all signature cards relative to the accounts, open and closed, of PENA'S CONCRETE & DEMOLITION, INC, for the period APRIL 1, 2007 TO THE PRESENT;
- (2) Copies of all corporate resolutions relative to the accounts, open or closed, of PENA'S CONCRETE & DEMOLITION, INC, for the period APRIL 1, 2007 TO THE PRESENT;
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- (5) Copies of 1 checks issued by the taxpayer for each month for the period APRIL 1, 2007 TO THE PRESENT. Please provide 1 check for each signer on account along with associated statements.

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**Business address and telephone number of IRS officer before whom you are to appear:**

8701 S GESSNER, STOP 5432HAL, HOUSTON, TX 77074-2926 - (281)721-7142

**Place and time for appearance at:** 8701 S GESSNER, STOP 5432HAL, HOUSTON, TX 77074-2926



Department of the Treasury  
Internal Revenue Service

[www.irs.gov](http://www.irs.gov)

Form 2039 (Rev. 12-2008)  
Catalog Number 21405J

on the 13th day of April, 2010 at 09:30 o'clock A m.

Issued under authority of the Internal Revenue Code this 9th day of March, 2010

R DOVALINA

Signature of Issuing Officer

REVENUE OFFICER

Title

ACTING MANAGER

Title

Signature of Approving Officer (if applicable)

**Part C -- to be given to noticee**